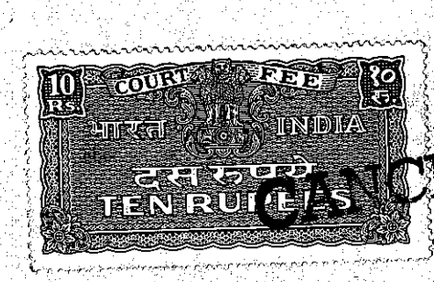

CANCELLED

(03)

dist

IN THE HON'BLE COURT OF CHHATTISGARH AT BILASPUR

CIVIL REVISION NO. 57 /2003 S.B.

(REVISION UNDER SECTION 23(E) C.G.ACCOMMODATION CONTROL ACT 1961)

APPLICANT : PARAS RAM SONI S/O SHRI JODHI PRASAD SONI, AGED ABOUT 65 YEARS, PROPRIETOR BHARAT PHOTO, R/O WARD NO. 4 MANENDRAGARH, DISTT. KOREA (C.G.)

Tenent Non-Applicant defendent learned court below Sr.Citizen.

V E R S U S

RESPONDENT : TARA BAI W/O TARA CHAND JAIN AGED ABOUT 50 YEARS HOUSE WIFE, R/O WARD NO. 15 MANENDRAGARH, DIST. KOREA (C.G.)

Landlady applicant/ Plaintiff in Learned Court below

R. No. 3[illegible] Filed by Shri A.M. Agrawal Adv. on 06.08.03

CIVIL-REVISION UNDER SECTION 23(E) OF THE C.G. ACCOMMODATION CONTROL ACT, 1961

(44)

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench: Hon'ble Shri Dhirendra Mishra

Civil Revision No. 57 of 2003.

Applicant/ Defendant : **Paras Ram Soni**

Vs.

Respondent/ Plaintiff : **Smt. Tara Bai Jain**

Applicant by Shri Yashwant Tiwari, Advocate.
Respondent by Shri Anup Majumdar, Advocate.

JUDGEMENT
(Delivered on 09/03/2005)

The instant civil revision has been preferred by the tenant against the order dated 31.12.2002 passed by Rent Controlling Authority, Manendragarh and by which the order of eviction under Section 23-A of the Rent Control Act (hereinafter referred as 'Act') has been passed against the applicant/defendant. (Parties hereinafter shall be referred to as per their description before the Rent Controlling Authority.)

The case of the applicant/plaintiff before the Court below was that she is a widow lady and owner of the suit premises and the non-applicant was the tenant of the suit accommodation for a monthly rent of Rs.100/-. She is residing with her two major sons, who are engaged in business. The elder son is engaged in the business of Sneh Milk whereas the younger son is doing his business of General Store in the present house situated in Ward No. 13. The house in their possession is a small and Kachcha and therefore, her son Anil Kumar Jain is not able to stock milk crate and the house in question is needed for business bonafidely by the elder son of the applicant. It was also alleged that the tenant was not paying the rent since 01.05.1987. A registered legal notice was sent by the applicant dated 25.08.1987 stating that the suit accommodation has been given on a monthly rent of Rs.70/- to the non-applicant and the accommodation is required bonafidely for the

(45)

business of her son. The non-applicant is not paying the rent regularly and he has defaulted in payment of rent from 01.05.1987.

The non-applicant in his reply to the application, under section 23-A of the Act before the Rent Controlling Authority, denied the averments of the applicant and stated that he is the tenant of M/s Tarachand Anil Kumar Jain firm on a monthly rent of Rs.70/- which is owned by Anil Kumar Jain. The applicant and her two sons are joint owners of the suit land and the rent is recovered by Anil Kumar Jain and the receipt was issued in the name of Tarachand Anil Kumar Jain. He further stated that the applicant is not competent to institute proceedings for eviction. He also submits that the milk business and business of general store is being jointly carried out by both the sons and her mother, the applicant and the house in possession of the applicant is quiet spacious for their residence and the business. The bonafide necessity of the elder son of the applicant for business was denied. It was also denied that the rent of Rs.490/- was out standing. It was stated that the applicant has herself refused to accept the rent. The permission in terms of Section 23-C of the Act was also prayed.

Learned Rent Tribunal allowed the application to defend. The applicant in support of her application, examined herself and her witnesses namely Sabbir Hussain, her son Anil Kumar Jain whereas the non-applicant examined himself. The non-applicant also filed rent receipts from Ex.D/1 to D/5 issued by M/s Tarachand Anil Kumar Jain.

That, the learned Rent Tribunal recorded a finding that non-applicant has not made payment of the rent regularly from 01.05.1987 and accordingly, the defence of the non-applicant was struck off under Section 13(6) of the Act.

Learned Court below further recorded a finding that the house where the applicant was residing, consists of two rooms, one kitchen and a sitting room and in the two rooms, her sons live with their wives and the general store is in front portion of the house and there is no space available in the suit house for the business of his son Anil Kumar Jain. It is further recorded that the applicant is a widow lady and she is the owner of the suit accommodation and the suit accommodation is required for business purposes for her major son who requires the suit accommodation bonafidely for his milk business. Accordingly, the Court below passed an order of eviction. Hence, this appeal has been preferred by the non-applicant.

A6

Learned counsel for the non-applicant submits that he has admitted the tenancy of the suit accommodation but he has denied that he was the tenant of the applicant-Tarabai. On the other hand, relying upon the document of Ex.D/1 to D/5, it is argued that actually the tenancy was between firm M/s Tarachand Anil Kumar Jain and the tenant and the rent was paid by the non-applicant to Anil Kumar Jain and therefore, there was no landlord and tenant relationship with Tarabai and on this ground he submitted that the present application on behalf of Tarabai is not maintainable. He further contended that the Rent Controlling Authority should have dismissed the application at the out set. It has been further argued that the applicant has failed to establish bonafide requirement of the shop as business of milk was being carried out with the premises in their occupation along with the general store.

As far as the finding of the Courts below that the tenant has made willful default in regular payment of rent is concerned, it is submitted that the rent was being regularly offered but the same was not accepted by the landlord and therefore, the same was deposited in the Court and no balance of rent was left. It is also argued that even when firm Tarachand Anil Kumar Jain let out the suit house on rent to the non-applicant, she was widow and therefore, she cannot be termed as a landlady within the meaning of Section 20J(III) of the Act and therefore, the application under Section 23-A at the instance of applicant was not maintainable.

On the other hand, learned counsel for the non-applicant submits that the tenant in his reply has himself admitted that the applicant and her two major sons are the joint owners of the suit property and the original owner of the suit property was Tarachand, husband of the applicant.

Thus, the contention of the non-applicant/tenant that the instant application is not maintainable under Section 23-A is without any force as Section 23-A (b) is only an enabling provision for filing application for eviction. The other objection of the non-applicant that he was inducted in the house as tenant even when the applicant was widow and therefore, the applicant is not included in the category of the landlord as contemplated in Section 23 (j) of the Act.

Learned counsel for the applicant has placed his reliance on the judgments delivered in the matter of ***Mrs. Winifred Ross and another, Vs. Mrs. Ivy Fonseca and others*** reported in ***AIR 1984 S.C, 458.***

47

The case of Mrs.Winifres Ross (supra) relates to the case of a retired member of the Armed Forces under the Bombay Act. In paragraph 9 the Supreme Court has observed thus:-

> *"Since a liberal interpretation of S.13-A-1 of the Act is likely to expose it to a successful challenge on the basis of Article 14 of the Constitution, it has to be read down as conferring benefit only on those members of the Armed Forces who were landlords of the premises in question while they were in service even though they may avail of it after their retirement. Such a construction would save it from the criticism that it is discriminatory and also would advance the object of enacting it, namely, that members of the armed forces should not while they are in service feel worried about the difficulties of a long drawn out litigation when they wish to get back the premises which they have leased out during their service. Persons in the position of the landlord in the present case can not therefore maintain a suit under S.13-A of the Act."*

The above interpretation of clause is based on a consideration of Article 14 of the Constitution of India which guarantees equality before the law. However, in the present case, by widow no such consideration arises. The proviso is based on a reasonable classification and is meant for a widow and therefore in the case of widow, no distinction can be drawn with reference to the tenancy in question being prior or subsequent to her widowhood.

That, from perusal of the impugned order, it also appears that the non-applicant has made willful default in making payments of rent regularly in time and the learned Tribunal has struck out the defence of the non-applicant under Section 13(6) of the Act. Thus, learned Tribuanl has rightly arrived to the conclusion that the suit accommodation is bonafidely needed by the widow landlady for the business of her major sons as the accommodation in possession of the applicant is too small and as per Section 23-D (III) of the Act, presumption of bonafide requirement of the landlord is available unless the contrary is proved by the tenant.

In view of the aforesaid discussions, the instant revision has no merits and it deserves to be dismissed and is dismissed accordingly. No costs.

With the aforesaid observations, M.C.P.Nos. 198/2003 & 620/2004 stand disposed of.

Sd/-
Dhirendra Mishra
Judge

Khan